

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 10, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 119 - 1-05-01**

HB 151 - 1-05-01

Executive Action: **HB 29 DPAA - HB 104 DPAA**

HEARING ON HB 119

Sponsor: Rep. Steve Vick, HD 31 said this is an Audit Committee Bill. The Audit Committee does performance audits and looks at all the different agencies. They also do fiscal audits. In that process they found something that is a technical clean-up: how the Board of Pardons and Paroles conducts its activities. For years, they have been using hearings officers and not the full parole board. It has become necessary to use the full board because of new regional prisons. What this Bill does is put into code what they are allowed to do.

Proponents: Kent Wilcox, Legislative Audit Division, said when they were conducting the audit they noted the statute states and authorizes the Board to use hearing officers to gather information. The Board has interpreted that as permitting them to use initial parole hearings also. However, there appears to be a conflict in statute. This Bill simply clarifies it.

Craig Thomas, Executive Director, Board of Pardons and Parole

Opponents: None

Questions from Committee Members and Responses: Rep. Newman asked Mr. Thomas to briefly explain the makeup of the Board of Pardons and the logistical difficulties he has with institutions in the various regions of the state as far as an appearance before only the Board. Mr. Thomas said the Parole Board is made up of part-time citizen members who volunteer their time to conduct parole business. There are three regular members and two auxiliary members and they normally meet once a month. There are six prisons they have to cover, including one in Shelby, regional prisons in Missoula, Great Falls and Glendive as well as the Montana Women's Prison and pre-release centers in all of the larger communities in the state. With a part-time citizen board it is virtually impossible for the full board to meet at each site and so, for the last twenty years the board has designated a staff person, a member of the board, and for offenders housed out of state, an out-of-state releasing authority to conduct hearings. It is very cost effective and has worked well in the past. To have all offenders appear before the full Board, there would be a need for a full-time board.

Rep. Clark asked if a designee is typically one person who does an interview, or sub-board? Mr. Thomas said normally it would be one member of the Parole Board or one staff person. Rep. Clark's concern was, one person would be only one perception where a full board would have several opinions. Mr. Thomas said what

occurs in the hearing process is the board designates a hearing officer. The hearing officer conducts the interview, takes notes, has a progress and conduct report from the facility, normally a psychological evaluation, and a board staff report. That information is submitted to the full board when they meet at the end of the month.

{Tape : 1; Side : A; Approx. Time Counter : 0.1 - 10.7}

When the hearing is conducted, the hearing officer takes notes, issues a recommended disposition to the Hearing Board to review the case and make the final decision.

Reps. Noennig, Hurdle, Gutsche, Mangan and Shockley asked Mr. Thomas for further clarification.

Closing by Sponsor: Rep. Vick closed the Hearing on HB 119.

HEARING ON HB 151

Sponsor: Rep. Brad Newman, HD 38 handed out **EXHIBIT(juh07a01)** and advised the committee that he is sponsoring the Bill at the request of the Department of Corrections and specifically the folks who operate the probation parole aspects of that department. The Bill is important for a number of reasons:

1) It helps conform and clarify the statutes on who exactly is under the supervision of the Department of Corrections. He wants to make sure that prosecutors, defense attorneys and judges have clear guidance in this area and for the Department of Corrections. The felony offenders and misdemeanor offenders should be remanded to the custody of local officials. There is statutory protection already in place, adopted by this Committee and the body as a whole, for local misdemeanor probation offices.

2) Additionally this Bill eliminates a conflict in the statutes governing modification of probation conditions, specifically Section 46-18-203, **EXHIBIT (1)**

{Tape : 1; Side : A; Approx. Time Counter : 10.7 - 30.1}

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 15.1}

Proponents: Mary Fay, Probation Bureau Chief, Department of Corrections said much of the Bill is clarification language, although there are some other significant changes. The first significant issue of the Bill deals with eliminating the ability for district court judges to order pre-sentence investigations on misdemeanor offenders. The Bureau has limited resources and, in her opinion, the resources should be used for those convicted of

felony offenses which are more serious than misdemeanors. The next significant issue of this Bill deals with providing the court with the ability to add or modify conditions of provisions without the court finding a violation. This bill also allows for the Department to request the court to set conditions of probation.

Dave Boyd, Department of Corrections, Parole Officer, Butte cited some cases in his jurisdiction.

Christy Brothers, Probation and Parole Officer, Butte spoke of a case in her area and felt this Bill would provide adequate supervision and provide for community safety.

Mike Ferriter, Administrator, Community Corrections Division said Probation and Parole is a unit within the unit he administers. In his opinion, this Bill simply adds tools for the probation and parole officers to carry out their duties and he feels it is his role to provide and assist officers with the appropriate tools in order for them to keep offenders in compliance with the conditions of probation and parole. Overall, their mission is to provide public safety and trust. These adjustments to the statutes will go a long way in allowing probation and parole to fulfill their duties and obligations.

Opponents: None

Questions from Committee Members and Responses: **Rep. Laszloffy** asked **Rep. Newman** if there is ever a case where somebody convicted has additional time added to their sentence after original sentencing and that additional time goes beyond the maximum allowed for that crime in statute? **Rep. Newman** said he knows of no such case that wouldn't be immediately reviewed by the Montana Supreme Court.

{Tape : 1; Side : B; Approx. Time Counter : 15.1 - 30.1}

Rep. Noennig to **Rep. Newman** for clarification concerning double jeopardy conditions. **Rep. Newman** said no, it does not exist.

Reps. Holden, Mangan, Hurdle, Clark, Peterson, Harris, Thomas, Eggers, Shockley to **Ms. Fay** for clarification, **EXHIBIT(juh07a02)**; and **Rep. Newman** concerning the fiscal impact. As of this date no fiscal note has been issued. Further questions of clarification of the Bill were referred to **Rep. Newman** concerning the constitutional issue of double jeopardy.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 29.5}

Closing by Sponsor: Rep. Newman closed the Hearing on HB 151. He appreciated the fact the committee members are willing to look at this Bill in detail and willing to help him work out a practical solution to this problem. They are trying to strike a balance that both protects the public and is fiscally responsible while still empowering the Department of Corrections to do the job it is mandated to do.

EXECUTIVE ACTION ON HB 29

Motion: REP. NOENNIG moved that HB 29 DO PASS. #1

Motion: REP. NOENNIG moved that HB 29 BE AMENDED.

EXHIBIT (juh07a03) #2

Discussion: Rep. Noennig explained the amendment concerning rights of landlords and tenants concerning damages and refunds.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 4.4}

Vote: Motion on Amendment EXHIBIT (3) carried unanimously. 20-0

Motion/Vote: REP. NOENNIG moved that HB 29 DO PASS AS AMENDED. #3
Motion carried unanimously. 20-0

EXECUTIVE ACTION ON HB 104

Motion: REP. CLARK moved that HB 104 DO PASS. #4

Motion/Vote: REP. NOENNIG moved that HB 104 BE AMENDED.

EXHIBIT (juh07a04) #5. Motion carried unanimously. 20-0

Motion: REP. HARRIS moved that HB 104 BE AMENDED. #6

An erroneous sentence or erroneous disposition is one that is erroneous as a matter of law. A sentence imposed in an illegal manner is one that is legal but was not imposed as required by law.

{Tape : 3; Side : A; Approx. Time Counter : 4.4 - 17}

Discussion: John MacMaster gave procedural information and lawful explanations to the committee concerning the amendment.

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 5.8}

Motion: REP. GALLUS moved a substitute motion that HB 104 BE AMENDED. #7. This amendment would strike "except" insert "that",

Part 1 of the amendment. Rep. Gallus withdrew his substitute motion.

Vote: Rep. Harris's amendment #6 failed 8-12.

Motion/Vote: REP. EGGERS moved the first part of the amendment HB 104 which would strike "except through the" and insert "the". #8. Motion carried unanimously 20-0

Motion/Vote: Rep. Gallus moved Part 2 of the amendment #9. Motion failed 3-17 with Reps. Shockley, Harris and Mangan voting yes.

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 8}

Motion/Vote: Rep. Shockley moved an amendment, page 1 of the original bill draft, line 27, delete lines 27 and 28 which is part 3 of the statute. #10 Motion carried unanimously 20-0

Motion/Vote: Rep. Noennig moved an amendment which would change his original amendment "at the time the judgment is entered on record the court shall give the defendant a copy of the judgment and a copy of subsection II of this section". #11 Motion carried unanimously 20-0

Motion/Vote: Rep. Peterson moved an amendment Line 25, insert after "file" "in the sentencing court". #12. Motion carried unanimously 20-0.

Motion/Vote: Rep. Laszloffy moved an amendment to the original amendment of Rep. Harris to read "an erroneous sentence or an erroneous disposition is one that is erroneous as a matter of law". #13 Motion carried 12-7 with Reps. Newman, Noennig, Peterson, Thomas, Wolery, Younkin and Shockley voting no.

Motion/Vote: Rep. Eggers moved an amendment, "The court shall modify the written judgment to conform to the oral pronouncements at a hearing in the presence of the defendant, unless the defendant waives his/her right to be present at such hearing". #14. Motion carried 19-0

Motion/Vote: Rep. Eggers moved Do Pass As Amended. #15 Motion carried unanimously 20-0.

ADJOURNMENT

Adjournment: 11:50 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh07aad)